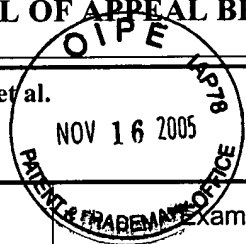


ZW AF

TRANSMITTAL OF APPEAL BRIEF (Large Entity)

Docket No.
112740-170

In Re Application Of: Jorg Kopp et al.



Application No.

09/857,926

Filing Date

June 11, 2000

Examiner

Viet Q. Le

Customer No.

29177

Group Art Unit

2667

Confirmation No.

2930

Invention: METHOD FOR OPERATING INTERFACE MODULES IN AN ATM

COMMISSIONER FOR PATENTS:

Transmitted herewith in triplicate is the Appeal Brief in this application, with respect to the Notice of Appeal filed on
September 14, 2005

The fee for filing this Appeal Brief is: \$500.00

- ☒ A check in the amount of the fee is enclosed.
- ☐ The Director has already been authorized to charge fees in this application to a Deposit Account.
- ☒ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. 02-1818
- ☐ Payment by credit card. Form PTO-2038 is attached.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

Signature

Peter Zura (Reg. No. 48,196)
Customer No. 29177

Dated: November 14, 2005

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on	
November 14, 2005	(Date)
Signature of Person Mailing Correspondence	
Heather Foster	
Typed or Printed Name of Person Mailing Correspondence	

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**THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Appellants: Jorg Kopp et al.
Appl. No.: 09/857,926
Conf. No.: 2930
Filed: June 11, 2000
Title: METHOD FOR OPERATING INTERFACE MODULES IN AN ATM
Art Unit: 2667
Examiner: Viet Q. Le
Docket No.: 0112703-0170

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Sir:

Appellants submit this Appeal Brief in support of the Notice of Appeal filed on September 14, 2005. This Appeal is taken from the Final Rejection dated June 14, 2005, which is attached as Appendix B.

I. REAL PARTY IN INTEREST

The real party in interest for the above-identified patent application on appeal is Siemens Aktiengesellschaft, by virtue of an Assignment dated August 17, 1999 and recorded at the United States Patent and Trademark Office at reel 011980, frame 85-87.

11/17/2005 TBESHAH1 00000012 09857926 _
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II. RELATED APPEALS AND INTERFERENCES

Appellants, Appellant's legal representative and the Assignee of the above-identified patent application do not know of any prior or pending appeals, interferences or judicial proceedings which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision with respect to the above-identified Appeal.

III. STATUS OF CLAIMS

Claims 4-6 are pending in the above-identified patent application, with claim 4 being the sole independent claim. Claims 4-6 stand rejected. Accordingly, Claims 4-6 are being appealed in this Brief. A copy of the appealed claims is attached as Appendix A.

IV. STATUS OF AMENDMENTS

No amendments were made in this application after the final rejection.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The present claims, and particularly independent claim 4 generally relates to a method for operating interface modules in an ATM communications device, wherein the interface modules are connected to a central control unit (amended specification page 4, lines 11-16). During operation, the method specifies each of the interface modules as one of active and redundant, and provides control commands for establishment and clearing of at least one virtual connection between the central control unit and the interface modules (amended specification page 5, lines 1-18). Once the control commands are provided, the control commands are transmitted approximately simultaneously from the central control unit to the active and the redundant interface modules, wherein the central control unit is notified of respective receipt of the control commands only by the active interface modules (amended specification page 5, lines 11-24). The approximately simultaneous transmission of the control commands to the active and redundant interface module dispenses with the need for direct communication between the active and redundant module, and performance is improved as a result of shorter connection establishment and clearing times. Furthermore, the load on the communications channels provided for the exchange of information between the active and redundant interface module is dynamically relieved, and communication capacities of the communications channel are consequently available for additional applications (amended specification page 3, line 26 – page 4, line 3).

Although specification citations are given in accordance with C.F.R. 1.192(c), these reference numerals and citations are merely examples of where support may be found in the specification for the terms used in this section of the Brief. There is no intention to suggest in any way that the terms of the claims are limited to the examples in the specification. As demonstrated by the references numerals and citations below, the claims are fully supported by the specification as required by law. However, it is improper under the law to read limitations from the specification into the claims. Pointing out specification support for the claim terminology as is done here to comply with rule 1.192(c) does not in any way limit the scope of the claims to those examples from which they find support. Nor does this exercise provide a mechanism for circumventing the law precluding reading limitations into the claims from the

specification. In short, the references numerals and specification citations are not to be construed as claim limitations or in any way used to limit the scope of the claims.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 4-6 stand rejected under 35 U.S.C. §102(e) as being anticipated by *Biegaj et al.* (U.S. Patent No. 6,091,730). A copy of *Biegaj* is attached as Appendix C.

VII. ARGUMENT

A. LEGAL STANDARDS

1. Anticipation under 35 U.S.C. §102

Anticipation is a factual determination that “...requires the presence in a single prior art disclosure of each and every element of a claimed invention.” *Lewmar Marine, Inc. v. Barient, Inc.*, 3 U.S.P.Q.2d 1766 (Fed. Cir. 1987). Moreover, “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil of California*, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987) (*emphasis added*).

Federal Circuit decisions have repeatedly emphasized the notion that anticipation cannot be found where less than all elements of a claimed invention are set forth in a reference. *See, e.g. Transclean Corp. v. Bridgewood Services, Inc.*, 290 F.3d 1364 (Fed. Cir. 2002). In this regard, a reference disclosing “substantially the same thing” is not enough to anticipate. *Jamesbury Corp. v. Litton Indust. Prod., Inc.*, 756 F.2d 1556, 1560 (Fed. Cir. 1985). A reference must clearly disclose each and every limitation of the claimed invention before anticipation may be found.

Further, anticipation cannot be shown by combining more than one reference to show the elements of the claimed invention. *In re Saunders*, 444 F.2d 599 (C.C.P.A. 1971). All elements of a claimed invention must be disclosed in one, solitary reference. As such, it is clear that a reference cannot be utilized to render a claimed invention anticipated without identical disclosure.

B. THE REJECTION UNDER 35 U.S.C. §102(E) IS IMPROPER BECAUSE *BIEGAJ ET AL.* DOES NOT ANTICIPATE THE CLAIMED INVENTION

In the Final Office Action, Claims 4-6 were rejected under 35 U.S.C. § 102(e) as being anticipated by *Biegaj et al.* (US Patent 6,091,730). Appellants submit this rejection is improper and should be reversed.

Specifically, *Biegaj* does not disclose “providing control commands for establishment and clearing of at least one virtual connection between the central control unit and the interface modules; and transmitting the control commands approximately simultaneously from the central control unit to the active and the redundant interface modules; wherein the central control unit is notified of respective receipt of the control commands only by the active interface modules” as recited in claim 4.

Biegaj clearly shows the virtual circuit (FIG. 2, ref. 203) as arranged between line cards 211 and 213 (col. 6, lines 20-23). *Biegaj*’s disclosure is entirely premised on disconnecting virtual circuits with regard to line cards 211 and 213, and there is no teaching in the document regarding virtual connections to control complex 201 (col. 7, lines 14-28). More specifically, *Biegaj* discloses a data switching network fabric for synchronizing duplicate modules of the fabric by controlling an ingress ATM fabric module and for controlling an egress module via virtual connections (col. 2, lines 10-20). In FIG. 2 of *Biegaj*, an arrangement is disclosed for setting up or tearing down a virtual connection, where a node control complex 201 directly generates information which is to be stored in the control memories of an ingress fabric interface, an egress fabric interface and the shared memory fabric (col. 6, lines 16-20). *Biegaj* teaches that the virtual connection to be set up is a uni-directional virtual path 203 having its input on line card 211 and its output on line card 213. The node control complex controls the setting up and tearing down of virtual connections by writing information into the memories of the ingress fabric interface, the egress fabric interface, and the shared memory fabric (col. 6, lines 21-27).

It is clear from the disclosure that the arrangement *Biegaj* is materially different from that recited in the present claims. *Biegaj* teaches that separate control cells are sent for

controlling an ingress ATM fabric module and for controlling an egress module. The control cell(s) for setting up the egress direction are sent ahead of the control cells for the ingress direction so that the egress module is prepared to receive actual user cells before the ingress module transmits such cells on the newly established virtual connection (col. 2, lines 10-20; col. 6, lines 29-54). Accordingly, *Biegaj* provides that “the node control complex simply sends control cells which directly cause the appropriate control memories to be changed. No acknowledgement for receipt of such control cells is required since it is doubtful that any substantial number of hardware failures can be caught by such a measure” (col. 7, lines 1-6).

It is also noted by the Applicants that *Biegaj* does not make distinctions between active or redundant interface modules. Also, through the uni-directional configuration and signaling disclosed in *Biegaj*, there is no feedback whatsoever regarding the active/redundant status of interface modules. Furthermore, the object of the disclosure in *Biegaj* is to synchronizing duplicate modules of the network fabric. In contrast, the present claims recite a method where feedback from redundant interfaces are avoided to minimize communication overhead (amended specification page 3, line 18 – page 4, line 3).

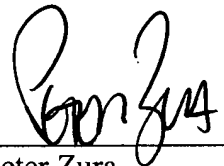
For the reasons discussed above, *Biegaj* fails to teach, suggest, or even disclose the present claims, and thus, fails to anticipate the present claims. Accordingly, Appellants respectfully request that independent Claim 4 and dependent Claims 5-6 that depend from these claims are in condition for allowance.

VIII. CONCLUSION

Appellants respectfully submit that claims 4-6 are not anticipated and non-obvious in view of the cited art. Accordingly, Appellants respectfully submit that the rejection of pending claims 4-6 is erroneous in law and fact and should be reversed by this Board.

Respectfully submitted,

BELL, BOYD & LLOYD LLC

BY 

Peter Zura

Reg. No. 48,196

Customer No.: 29177

Phone: (312) 807-4208

Dated: November 14, 2005

APPENDIX A
PENDING CLAIMS ON APPEAL OF
U.S. PATENT APPLICATION SERIAL NO. 09/646,442

Claims 1-3. (canceled)

Claim 4. (previously presented): A method for operating interface modules in an ATM communications device, wherein the interface modules are connected to a central control unit, the method comprising the steps of:

specifying each of the interface modules as one of active and redundant;

providing control commands for establishment and clearing of at least one virtual connection between the central control unit and the interface modules; and

transmitting the control commands approximately simultaneously from the central control unit to the active and the redundant interface modules;

wherein the central control unit is notified of respective receipt of the control commands only by the active interface modules.

Claim 5. (previously presented) A method for operating interface modules in an ATM communications device as claimed in claim 4, wherein no additional synchronization of the redundant and active interface modules is performed.

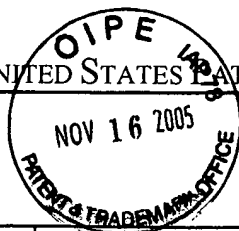
Claim 6. (previously presented) A method for operating interface modules in an ATM communications device as claimed in claim 4, wherein the procedures provided for controlling the active and redundant interface modules are processed approximately concurrently.

APPENDIX B

Final Office Action Mailed on June 14, 2005



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/857,926

06/11/2001

Jorg Kopp

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06/14/2005

BELL, BOYD & LLOYD, LLC
P. O. BOX 1135
CHICAGO, IL 60690-1135

EXAMINER

LE, VIET Q

ART UNIT

PAPER NUMBER

2667

DATE MAILED: 06/14/2005

DUE: 9/14/05

References Downloaded

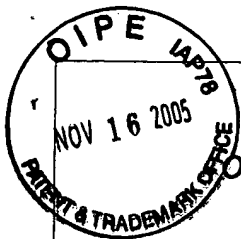
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Office Action Summary

Application No.

09/857,926

Applicant(s)

KOPP ET AL.

Examiner

Viet Q. Le

Art Unit

2667

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. This communication is in response to applicant's amendment filed on April 01, 2005. Claims 4-6 are pending.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 4-6 are rejected under 35 U.S.C. 102(e) as being anticipated by Biegaj et al. (U.S. 6,091,730), hereinafter referred to as Biegaj.

Regarding claim 4, Biegaj disclosed a method for operating interface modules in an ATM communication device (See Fig. 2), wherein the interface modules (Figure 2, boxes 211 & 227 and 213 & 227) are connected to a central control unit (See Fig. 2, box 201), the method comprising the steps of:

Specifying each of the interface modules is specified as one of active and redundant (Column 4, lines 4-8; Column 7, lines 9-13);

Providing control commands for establishment and clearing of at least one virtual connection between the central control unit and the interface modules (See column 6, lines 16-17); and

Transmitting the control commands approximately simultaneously from the central control unit to the active and the redundant interface modules (Column 7, lines 9-13, 49-59);

Wherein the central control unit is notified of respective receipt of the control commands only by the active interface modules (See column 7, lines 1-6. Only active interface send the acknowledgement back to the controller. When the primary card failed, the system will switch to the redundant interface card and the redundant card becomes active and it will send the acknowledgement back to the controller because the primary card already failed. When the system does not fail, only the primary card send the acknowledgement to the controller).

Regarding claim 5, Biegaj disclosed a method as described in claim 4 no additional synchronization of the redundant and active interface modules is performed (See Column 7, lines 9-13 & 49-59).

Regarding claim 6, Biegaj disclosed a method as described in claim 4, wherein the procedures provided for controlling the active and redundant interface modules are processed approximately concurrently (See column 4, lines 54-57; column 7, lines 9-13).

Response to Arguments

4. Applicant's arguments filed April 01, 2005 have been fully considered but they are not persuasive.

Applicant argues on page 3 that Biegaj does not disclose providing control commands for establishment and clearing of at least one virtual connection between the central control unit and the interface modules.

Examiner respectfully disagrees. Biegaj does disclose providing control commands for establishment and clearing of at least one virtual connection between the central control unit and the interface modules (See column 6, lines 16-17).

Applicant argues on page 3 that Biegaj does not transmit the control commands approximately simultaneously from the central control unit to the active and the redundant interface modules.

Examiner respectfully disagrees. Biegaj does transmit the control commands approximately simultaneously from the central control unit to the active and the redundant interface modules (Column 7, lines 9-13, 49-59) where the central control unit is notified of respective receipt of the control commands only by the active interface modules (See column 7, lines 1-6. Only active interface send the acknowledgement back to the controller. When the primary card failed, the system will switch to the redundant interface card and the redundant card becomes active and it will send the acknowledgement back to the controller because the primary card already failed. When


Art Unit: 2667

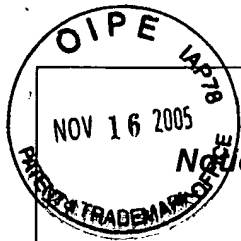
the system does not fail, only the primary card send the acknowledgement to the controller).

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


CHI PHAM
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2000
6/13/05



Notice of References Cited

Application/Control No.

09/857,926

Applicant(s)/Patent Under
Reexamination
KOPP ET AL.

Examiner

Viet Q. Le

Art Unit

2667

Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-6,091,730	07-2000	Biegaj et al.	370/395.2
	B	US-			
	C	US-			
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

APPENDIX C

U.S. Patent No. 6,091,730 (“Biegaj et al.”)

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